

17 October 2018



Planning Reform Team

via email: DPTI.PlanningEngagement@sa.gov.au

Dear Planning Reform Team

RE: PLANNING REFORM: ASSESSMENT PATHWAYS DISCUSSION PAPER

The Resilient East Project Steering Committee (the Committee) welcomes the opportunity to provide feedback on the Assessment Pathways Discussion Paper. The Resilient East Project is a partnership between the Campbelltown City Council, the Cities of Adelaide, Burnside, Norwood Payneham & St Peters, Prospect, Tea Tree Gully, Unley and the Town of Walkerville and the South Australian Government, as detailed in Appendix 1. This submission is part of the ongoing participation by the resilient East Steering Committee to contribute to the planning reform process.

This input does not reflect formal Council consideration by any of the constituent Councils. Councils may make individual submissions to this process.

Purpose of feedback

The key purpose of the Committee’s feedback is to ensure that the State Planning Reforms adequately support key priority commitments which relate to climate adaptation and the work of councils to strengthen community preparedness to extreme events and improve sustainability.

What role does planning play?

The Planning Framework is a critical tool providing direction towards sustainable development and must be strengthened if the cumulative outcomes for community resilience, higher canopy and green cover and improved biodiversity are to be achieved.

Key Question - Relevant Authorities

Code assessed applications are assigned to an assessment panel, except where the regulations assign an assessment manager or accredited professional.

1. What should be considered when assigning relevant authorities?

The key challenge is to ensure that the planning framework process is able to guide Code assessed development proposals in a way that supports the Objects of the Act in relation to social, economic and ecological sustainability. Success for code assessed developments will depend on how well the principles of good planning are integrated into the Planning Design Code, zone layers, guidelines, overlays and referral mechanisms.

When assigning relevant authorities, the assessment panel should consider the how well the capacity, skill set, public transparency and responsibilities of the authorities are suited to making the decisions related to the development. For example, for developments in settings that include



natural assets on sites or adjacent to the sites, then the Panel, Assessment Manager or accredited professional will require:

- skill sets relating to the ecological sustainability impacts of planning decisions
- guidance provided by the Design Code, zoning and additional guidelines that support outcomes in line with sustainability, such as for Green Adelaide, 20% increased canopy cover, Water Sensitive Urban Design and biodiversity.

The Committee has made a submission on the Accredited Professionals draft scheme which further expands on this discussion.

2. Should the current scope of 'exempt' development be expanded to capture modern types of common domestic structures and expected works?

There is a caution that exempt development does not exempt proponents from other regulations under the Act such as for Regulated Trees or floodplain management. Any expansion of exempt development should also provide additional guidance or notification on ensuring compliance with those parts of the legislation that still apply or are the subject of further approval processes.

3. Should the current scope of 'building consent only' development be expanded to allow for more types of common development with minor planning impacts?

Minor planning impacts may relate to vegetation clearance with canopy cover loss, biodiversity loss and regulated tree loss. In cumulative aggregation these impacts become significant and diminish progress towards achievement of state objectives. Any expansion to allow for more types of common development should also provide additional guidance on how to support the ecological sustainability Object of the Act.

4. How should the scope of a 'minor variation' to deemed-to satisfy development be defined?

The scope of 'minor variation' to deemed to satisfy elements should be considered against the key design outcomes and good design outcomes of social, economic and ecological sustainability that the Planning Framework is seeking to guide. As examples, the Planning Framework will need to be able to identify and provide guidance around restrictions for:

- Minor variations on scope that result in a significant impact on adjoining properties, the character and other social impacts
- Minor variations in scope that result in a significant impact on the ecological sustainability of a development.

For example, would the removal of proposed landscaping or omission of a rainwater tank or WSUD feature, constitute a minor variation to a Deemed to Satisfy application? Strict guidelines would need to apply.

5. Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height)? Are there other things that don't matter as much for the purposes of notification?

Yes, as with Question 4, where there changes proposed that will result in material changes beyond the deemed to satisfy criteria, particularly in relation to social and impacts on the ecological sustainability, vegetation, regulated trees, then these should be notified.

6. What types of performance assessed development should be assessed by an Assessment Panel?



It is difficult to provide comment on the types of assessment that should be prescribed for the authority of an Assessment Panel without knowing what land uses and structures will be in the Planning and Design Code and what level of policy guidance will govern their assessment.

Careful consideration should be given to the following types of development, which need clear policy parameters set out in the Code:

- Significant community interest
- Externality costs borne by the broader community
- Impacts on regulated trees
- A development that damages or breaks a biodiversity corridor (as appropriate to rural and urban settings - eg. in a functioning nature corridor in rural SA, or through through a connected network of private land gardens in metropolitan Adelaide).
- Any development that does not support Green Adelaide goals for increased canopy and green cover, supporting biodiversity, best utilisation of Water Sensitive Urban Design (WSUD), including to ensure that water discharged to the stormwater network is clean.
- Development that is at significant variance with the urban character within a suburb.

If the policy settings are not sufficiently robust, consideration should be given to allocating such types of development to be assessed by a Panel.

7. What types of principles should be used when determining ‘restricted’ development types in the Planning and Design Code?

It is agreed that the following principles should be applied to determining restricted development types of development that:

- are highly complex
- require a higher order of assessment
- are beyond an expected use and/ or scale (and therefore notification and recourse through appeal rights is required)
- might create an impact that may be unacceptable in the zone/locality
- defined development where the interface between land uses is insufficient to prevent impacts on more sensitive land uses
- have impacts that are unknown or potentially significant
- require detailed investigation to determine the extent of impacts
- require referral to an external agency/authority (and the advice required is not addressed in the Planning and Design Code).

Additional principles to determine restricted development should include:

- Climate and natural hazards risk exposure, including for developments that may have a high residual risk of vulnerability to extreme events such as bushfire, flooding, inundation, storm surge and sea level rise, ground instability (including liquefaction)
- Developments that may cause significant environmental harm beyond the initial application due to residual risk (such as requiring additional asset protection zones and bushfire buffer zones and asset protected access roads to make a development safe or mitigate environmental impacts, beyond the initial development application).
- Developments that may cause significant environmental harm, including from regulated tree removals and damaging functioning nature corridors and biodiversity habitat.

8. How should restricted development be assessed - what other considerations outside of the Code should be taken into account?

Restricted development should be assessed against the core component of the Primary Objective of the Act to *“to support and enhance the State's liveability and prosperity in ways that are ecologically sustainable”*.

The Code is established as a Rule Book for assessing developments and restricted development should only be tested against these rules, not subject to an alternative, external process. The Code must be developed in a way that supports and delivers the the primary objective of the Act. However, restricted developments that do not adequately meet the Code or may not be consistent with zoning, should be considered for each design element that may cause an impact which may (in the short or longer term) be to the detriment of liveability, may not support prosperity and may be ecologically unsustainable.

In relation to a changing climate and the changing nature of the safety and longevity of developments and communities, there is a greater urgency to limit and even prevent developments in locations that are unsafe and cannot be made safe without causing excessive cost to communities or excessive harm to natural environments.

Enabling restricted development to be assessed upon (and not bound by) matters outside the Code will undermine certainty and transparency in the planning system. There should be full visibility of the reasons and justification of the State Planning Commission for proceeding with and approving a Restricted Development, which should always be based on Code, not on their *“individual circumstances”* as *“beneficial projects that don't meet all the guidelines”* as stated in the Discussion Paper.

9. What scale of development and/or impact types would be suited to the impact assessment (not restricted) pathway?

The scale of the impact and the type of impact is as important as the scale of development in consideration of whether it should be impact assessed. The Environmental Impact Assessment should provide the highest order of assessment and mitigation requirements and if necessary include clear pathways for early refusal. Of particular importance is the checking and assurance that responses and mitigation actions suggested are adequate and enforceable, particularly in matters such as responding to climate change and ecological sustainability.

Until the State Planning Commission issues a practice direction which sets out the assessment guidelines, including the requirements of an Environmental Impact Statement, it is not possible to determine the adequacy of the system. There may need to be several opportunities to refine assessment pathways, requirements on an EIS, and the standards/clarity of responses required.

10. Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?

Assessment managers should have the capacity to determine publicly notified applications, except where there are defined elements of complexity and public interest, including where representations have been made opposing a proposal.

Accredited professionals as private consultants, whose service is purchased by an applicant, should not have the capacity to determine publicly notified applications or any application where subjective, discretionary judgement is made due to the nature of planning regulation being a public



interest and function. This scope should not be made available to privately engaged consultants issuing approvals on payment of a fee by applicants.

11. Who should be responsible for placing a notice on the subject land? 12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?

No comment

13. For how long should an application be on public notification (how long should a neighbour have to provide a submission)? Should a longer period apply for more complex (i.e. impact assessed) applications?

The period should be for a single fixed time period with the start and finish dates made in the explicitly clear to the public so that the timeframes are easily seen and understood in a standardised format.

Longer time periods may provide have some merit, but could also cause additional confusion and uncertainty as to which time period might apply. A minimum three week time period for impact assessed applications will provide sufficient time for the notification to be sighted and comments prepared, an EIS should be available for comment for longer (6-8 weeks).

14. What type of information should be submitted with deemed-to-satisfy applications? Are the current requirements in Schedule 5 of the Development Regulations 2008 sufficient/too onerous?

Schedule 5 provides the foundation for planning decisions and consent for development proposals and is essential in assuring that developments are being approved in accordance with the primary objective of the Act. There are additional matters that should be incorporated into Schedule 5, including:

Under 1—Plans for building work

Add in for metropolitan Adelaide:

- Clarify: **Identification and location of all regulated trees and other trees** on the site or on adjoining land or public places that might be affected by the work or affect the work proposed to be performed;
- The extent of current canopy and green cover, and grassed areas (location, dimensions and area);
- Proposed extent of canopy and green cover, and grassed areas (may include rooftop gardens) and nett loss or gain of these areas;
- Description and location of Water Sensitive Urban Design features and permeable paving.

15. Should relevant authorities (including accredited professionals) be allowed to dispense with the requirement to provide the mandatory information listed by the regulations/code/practice directions?

No

16. Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority?

If there is a question or further information required that is material to whether a development is consistent with the primary objective of the Act to “support and enhance the State's liveability and prosperity in ways that are ecologically sustainable” then the agency or panel should be able to request the additional information/amendment.

17. Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?

Yes, where the amendments raise questions as to the suitability against requirements of the Code.

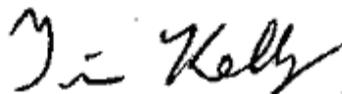
18--33

Questions 18-33 are of a detailed technical nature with no specific comment offered by this Committee.

Thank you for the opportunity to provide comment on the Assessment Pathways Discussion Paper. If you wish to further discuss the comments contained in this submission, please contact me and I would be happy to arrange a meeting with representatives of our Committee.

The Committee seeks acknowledgement of this submission and feedback as to how these comments have been considered in the drafting of the scheme.

Yours sincerely



Tim Kelly
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Appendix 1 Resilient East Project Steering Group (October 2018)

Council/Dept	Project Steering Group Member	Proxy
City of Adelaide	CHAIR - Michelle English Associate Director Sustainability [Redacted] [Redacted]	Bec Taylor Sustainability Coordinator [Redacted] [Redacted]
Town of Walkerville	DEPUTY CHAIR Mark Kwiatkowski Manager Planning and Environment [Redacted] [Redacted]	Sonia DeNicola Manager Communications & Marketing [Redacted] [Redacted]
City of Campbelltown	Kevin Lowe General Manager Urban Planning and Leisure Services [Redacted] [Redacted]	Rachael Hamilton Coordinator Environment and Sustainability [Redacted] [Redacted]
City of Norwood Payneham & St Peters	Eleanor Walters Manager Urban Planning and Sustainability [Redacted] [Redacted]	Mary-Anne Siebert Sustainability Officer [Redacted] [Redacted]
City of Prospect	Simon Bradley Director - Infrastructure and Environment [Redacted] [Redacted]	Naomi Prunckun Environment & Sustainability Officer [Redacted] [Redacted]
City of Tea Tree Gully	Jon Herd Environmental Sustainability Co-ordinator City of Tea Tree Gully [Redacted] [Redacted]	James Kelly Team Leader Civil Assets City of Tea Tree Gully [Redacted] [Redacted]
City of Unley	Kat Ryan Coordinator Environmental Projects & Strategy [Redacted] [Redacted]	Aaron Wood Manager Strategic Assets [Redacted] [Redacted]
City of Burnside	Ben Seamark Coordinator Open Space Recreation and Environment [Redacted] [Redacted]	Phil Roetman [Redacted] Mark Ellis [Redacted]
Natural Resources AMLR	Zafi Bachar Climate Applications Coordinator [Redacted] [Redacted]	Sam Phillips Water Projects Engineer [Redacted] [Redacted]
DEWNR Climate Change	Rhiannon Niven a/Senior Policy Officer DEWNR Climate Change Branch [Redacted] [Redacted]	Christopher Wright Manager, Adaptation and Infrastructure [Redacted] [Redacted]
Coordinator	Tim Kelly Resilient East Project Coordinator Email: [Redacted] [Redacted]	